

WA Supreme Court expands protections against racism in civil cases

Oct. 21, 2022 at 7:00 am Updated Oct. 21, 2022 at 7:32 am



Washington State Supreme Court Building in Olympia. (Ellen M. Banner / The Seattle Times)



By [Mike Carter](#)
Seattle Times staff reporter

The Washington Supreme Court in a powerful, unanimous opinion Thursday ruled that a new trial is the only adequate remedy in civil cases where racial bias was a factor in court, finding that “race-based” misconduct can “never be a harmless error.”

The opinion is the latest issued by the justices aimed at addressing and removing racism from the state court system.

The court, ruling in a personal injury case resulting from a car crash, concluded that the trial court should have held a hearing to explore the allegations of racial bias raised by

the defense, and ordered it back to King County Superior Court for such a hearing and almost certainly a new trial.

The justices, [in a 33-page opinion written by Justice Raquel Montoya-Lewis](#), found that the plaintiff in the case, Janelle Henderson, who is Black, and her Seattle attorney, Vonda Sargent — who is also Black — were both subjected to defense statements that played to racist tropes and suggested impropriety between Henderson and her Black witnesses. Justice Gordon McCloud wrote a separate, concurring opinion that questioned the majority's characterization of some of those statements.

The justices also concluded Superior Court Judge Melinda Young abused her discretion by failing to punish the defense for withholding evidence from Henderson's lawyers before the trial took place.

However, it is the high court's instructions on when such hearings should be held, and what rules should apply in determining whether race played a role in any verdict, that drew a new hard line for Washington judges and lawyers alike.

The opinion states an evidentiary hearing about racial bias must be held if the court is presented with evidence that an "objective observer" — defined by the justices as "someone who is aware that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have influenced jury verdicts in Washington State" — could conclude racial bias was a factor in a verdict.

Moreover, at the hearing there is a presumption that the verdict resulted from bias until the opposing side can demonstrate it is not, shifting the burden of proof to the accused party.

If it was, the justices said, the trial court must order a new trial, concluding that no race-based error is so small it can be ignored or considered nonreversible.

Sargent, Henderson's attorney, did not respond to requests for comment Thursday.

In June, the justices held that race-based error or misconduct is never harmless in a criminal case, "recognizing that a verdict affected by racism violates fundamental concepts of fairness and equal justice under the law."

"Today, we emphasize that while the legal framework differs in the civil context, the same principle applies in civil matters," Montoya-Lewis wrote. "Racism is endemic, and its harms are not confined to any place, matter or issue."

The justices concluded racism affected Henderson's ability to seek compensation for injuries she suffered when her vehicle was rear-ended by a car driven by Alicia Thompson, who is white.

Thompson acknowledged fault, but refused to compensate Henderson for whiplash, which she claimed exacerbated the symptoms of her Tourette's syndrome, resulting in increased tics and significant pain, according to the court pleadings. Henderson sued in 2017, seeking \$3.5 million.

Heather Jensen, who is identified as Thompson's trial attorney in the Superior Court docket, did not respond to requests for comment Thursday.

The case went to trial in 2019, where the defense portrayed Henderson as "confrontational" and "combative," which the justices said invoked the harmful stereotype of an "angry Black woman," and suggested race-based collusion between Henderson and her witnesses — three of whom were Black women who all used the same terminology, "life of the party," to describe Henderson when they testified.

Thompson's counsel alluded to several racist stereotypes about Black women during the closing arguments, including arguing Henderson was exaggerating or fabricating her injuries to "acquire an unearned financial windfall," Montoya-Lewis wrote.

All of this, the justices concluded "invited the jury to make decisions on improper bases like prejudice or biases about race, aggression and victimhood," the opinion says.

The jury returned a verdict of just \$9,200, an amount so low that Henderson's attorneys argued it demonstrated that the jury had been influenced by the racist comments.

Other evidence that racism was at play: The jury asked that Henderson leave the courtroom before they returned with a verdict.

The case drew "friend of the court" filings from the American Civil Liberties Union of Washington, Disability Rights Washington, the local chapter of the National Lawyers Guild and the Loren Miller Bar Association, a statewide advocacy and civil rights group made up of Black attorneys.

The opinion quotes liberally from the LMBA brief, with the justices acknowledging racism and prejudice can be aimed at attorneys of color, not just the clients they represent. The brief contains stories from attorneys who "suffered humiliation, condescension, and contempt expressed or allowed by judges in the courtroom."

"This kind of treatment diminishes the legal profession by continuing to tell lawyers of color that their presence seems unusual and surprising," it says.

Seattle attorney Andra Kranzler, who wrote the LMBA brief, said Thursday the ruling will go far in ensuring civil trials in Washington's courts are free from racism and have a strong remedy if it is found.

“This puts the burden on the prevailing party to prove they didn’t win due to racism,” she said. “We needed this. It is huge. I sat in my car this morning and cried. It felt like we were heard.”

Mike Carter: 206-464-3706 or mcarter@seattletimes.com; on Twitter: [@stimesmcarter](https://twitter.com/stimesmcarter).